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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,225	02/11/2002	Thomas J. Coleman	278-101P-WLK	9263

7590 10/21/2004

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,225

Applicant(s)

COLEMAN ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6, 8 and 13-23 are rejected under 35 USC 112, first paragraph for containing New Matter. Claim 1 now recites that the container includes at least one compartment which reads on one compartment. However, there appears to be no support in the specification as originally filed for the container only having one compartment. The entire specification appears to be directed to two or more compartments.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,7,10-16 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman (5,370,884) in view of Donsky (6,120,202) and Baker (WO 00/19803), further in view of PhiladelphiaCityPaper.Net, www.topps.com/Confectionary/BabyBottlePop/(2001), www.toppscanada.com/Confectionary(2000), further in view of Gallart et al (6,187,350) Schlotter et al (4,914,748) and Silverstein (6,136,352).

Claim 1 now recites a removable cover connected to the closure which is configured to cover and protect the candy sucker, Coleman discloses providing a cover to cover and protect the candy sucker (i.e. a wrapper is provided to cover the entire

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combination or just the candy sucker – col. 2, para 2) but does not say whether the cover is connected to the closure. Philadelphia City Paper.net describes Topps' Baby Bottle pop which is a plastic baby bottle filled with an edible powder, topped with a screw – off nipple shaped candy and a re-sealable plastic cap. The Topps' product, which has been around since 1998, thus employs a candy sucker which is part of a closure which is screwed onto the bottle and an outer cap which will be associated with the candy/closure structure. WWW.topps(2001) and www.toppscanada(2000) are relied on in their photographs as further evidence of the cap and a screw off nipple. In the www.topps(2001), the halo-appearing object surrounding the candy/nipple is the cap and www.toppscanada(2000) shows the screw off nipple better (which replicates the screw off nipple of a real baby bottle). To modify Coleman and substitute one conventional closure structure for another conventional closure structure for its art recognized and applicant's intended function is seen to have been obvious. Gallart et al., Schlotter et al and Silverstein can be relied on as further evidence of caps to fit over and protect a confection that is secured to a supporting surface. Note that Gallart et al discloses the snap fits with the confection support and it would therefore have been obvious to provide Coleman with a snap fitting cap (claim 3). In regard to claim 11, Gallart et.al, Schlotter et al and Silverstein teach associating a confectionary directly to a support structure by employing a protrusion so that the confection is directly molded to the article.

Claims 6, 8, 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 1 above, and further in view of Coleman et al

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(5,690,535), Parr (D 117,455), Parr (D 117456), Kennedy (2,464,515), Overland (2,500,006) and Ferguson (2,834,685) for the reason given in the Office action mailed 4/23/04.

Claims 24-28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Cassai et al (D 300269) and Clement (4,600,328) for the reasons given in the Office action mailed 4/23/04.

The recitations concerning the newly recited removable cover have been addressed above. Philadelphia City Paper.net discloses the combination of a container containing an edible product, a confectionary associated with a closure device for the container and a cap that covers the confectionary device and is associated with the cover. Gallart et al and Schlotter et al, can be relied on as further evidence of a flange /cap association.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 24 above, and further in view of Coleman et al ('535), Parr ('455), Parr ('456), Kennedy ('515), Overland ('006) and Ferguson ('685) who are applied for the reasons given above.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 3-5, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Philadelphia City paper, net, [www.topps.com/Confectionary/BabyBottlePop\(2001\)](http://www.topps.com/Confectionary/BabyBottlePop(2001)) and [www.toppscanada.com/Confectionary\(2000\)](http://www.toppscanada.com/Confectionary(2000)).

In regard to claim 1, which now recites 'at least one compartment', the Philadelphia City paper.net along with the other two web sites discussed above, evidences the fact that Topps Baby Bottle Top is a candy sucker article comprising a container configured for containing an edible product accessible when said container is opened, candy sucker (i.e. the nipple) associated with a handle/closure opened, closure which is removably connected to the container by (screw threads) wherein the candy sucker extends upwardly and the candy sucker is protected by a removable cap/closure, and thus anticipates claims 1,3-5,15 and 16. Applicants are requested to furnish any more information(description and photos) they may be aware of concerning the Topps Baby Bottle Top.

All of applicant's remarks filed 7/23/04 have been fully and carefully considered but are considered to be moot in view of the new ground of rejection necessitated by applicants' amendment. The art taken as a whole clearly teaches it would have been obvious to modify Coleman ('884) and substitute a conventional cap/closure for the conventional closure of Coleman for its art recognized and applicants' intended function.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
October 14, 2004

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
10/20/04